

ORDINANCE NO. 9680-23

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA AMENDING CHAPTER 22, ARTICLE I & II, PROVIDING A DEFINITION FOR ELECTRONIC CIGARETTE; USE REGULATIONS TO PROHIBIT SMOKING AND VAPING IN CITY OWNED PUBLIC PARKS AND BEACHES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 2022-213, Laws of Florida, enacted and signed into law by the Governor on June 24, 2022, effective July 1, 2022, amended the Florida Clean Air Act (Chapter 386, part II, Florida Statutes) to provide that counties and municipalities may restrict smoking within the boundaries of any public beaches and public parks the local government owns, with the exception of restrictions on the smoking of unfiltered cigars which is preempted to the State; and

WHEREAS, cigarette butts are one of the most commonly found items of litter on Florida's beaches. The litter caused by those who improperly dispose of cigarette butts or other tobacco products on the Public Beach and in Public Parks is difficult to remove from the beaches, can cause ingestion hazards to wildlife, can significantly detract from a healthy environment, and reduce the enjoyment of the City's public beaches and parks for those individuals and families who want to enjoy a healthy environment, free of smoking-related pollution and hazards; and

WHEREAS, the Florida Legislature in its staff analysis of the amendment to Chapter 386, part II noted that exposure to secondhand smoke can cause numerous health problems and has been causally linked to cancer and to other potentially fatal diseases. Secondhand smoke is generally defined as smoke from burning tobacco products or smoke that is exhaled by a tobacco smoker; and

WHEREAS, the City Council desires to protect the aesthetic beauty and environmental health of the City's public parks and beaches; and

WHEREAS, the City Council determines that the adoption of this Ordinance to be in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA, THAT:

Section 1: Sec. 22.21, Clearwater Code of Ordinances is amended as follows:

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized or authorization means that the city manager, director, or harbormaster must officially approve and authorize requests. Authorization entails a written letter or memorandum granting the request.

Courtney Campbell Recreation Area means that portion of Section 16, Township 29 South, Range 16 East, Pinellas County, Florida lying south of a line forty five feet south of and parallel with the centerline of survey of State Road 60 as per Section 15040-(2517)2522, north of a line two hundred feet south of and parallel with said centerline of survey, from station 127+37.14 to station 148+74.58 of said centerline of survey and containing 7.606 acres more or less.

Department means the city parks and recreation department or marine department.

Director means the director of the city parks and recreation department.

Harbormaster means the director of the city marine department.

Electronic cigarette and e-cigarette means any product that employs an electronic, chemical, or mechanical means that provides, or is manufactured to provide, a vapor of liquid nicotine or other substances mixed with propylene glycol or other substances delivered or deliverable to the user that he or she can inhale in simulation of smoking, vaping, or other inhalation mechanism. This term shall include every version and type of such devices whether they are manufactured or marketed as e-cigarettes, e-cigars, e-pipes, or under any other product name or description.

Marine department means the city marine department.

Organized activity means any planned recreational activity or game having formal organization or structure, or any activity or game affiliated with membership in an organization such as a school or social organization. Organized activity shall not mean informal or casual "pick-up" recreational activity or games, occurring without regularity or occurring spontaneously or by chance.

Park property means all areas, buildings, locations and facilities described in the definition of parks.

Park roads means all surfaced areas designated for vehicular traffic, and passing through any legally defined park or recreational area or any part thereof.

Parking area means any designated part of any park road, drive or special area contiguous thereto that may be set apart for the standing or stationing of any vehicle.

Parks and other areas operated and maintained by the city parks and recreation department mean real property and structures which are under the control of or assigned for upkeep, maintenance or operation by the city parks and recreation department.

Person shall be understood, as employed herein, to mean any individual regardless of age or sex, or any corporation, company, association, firm, partnership, club, society, or any association of person, or any agent or employee thereof.

Public bathing beaches means public beaches abutting the Gulf of Mexico which are assigned to the city parks and recreation department for upkeep and maintenance and to the city manager or his designee for operation.

Public beach means the public bathing beaches and the Sand Key Public Beach.

Public nudity shall be defined as set out in Chapter 21, Offenses, of this Code, as may be amended from time to time.

Sand Key Public Beach means that portion of sandy beach within the corporate limits of the City of Clearwater lying landward of the shoreline and seaward of the erosion control line established pursuant to Chapter 161, Florida Statutes (1997), by the Board of Trustees of the Internal Improvement Trust Fund as part of the Sand Key Phase IV Beach Restoration Project.

Vehicle means any wheeled conveyance, except a baby carriage or wheelchair, for the transportation of persons or materials whether:

- (1) Powered or drawn by a motor, such as an automobile, truck, motorcycle, scooter, moped;
- (2) Human- or animal-drawn conveyance such as a carriage, wagon or cart;
- (3) Self-propelled, such as a bicycle or tricycle; or
- (4) Any trailer in tow of any size, kind or description.

Section 2: Section 22.32 is created as follows:

Sec. 22.32 Smoking and vaping.

- (a) No person shall use, consume, inhale, exhale, or burn any (i) electronic cigarette, as defined in Chapter 22.21 of this Code, or (ii) lighted tobacco product, including cigarettes, pipe tobacco, and any other lighted tobacco product with the exception of unfiltered cigars, in or on public beaches and public parks owned or controlled by the City.
- (b) The consumption, inhalation, exhalation, or burning of any electronic cigarette or lighted tobacco product that is done in connection with a City sponsored or co-sponsored event approved by a resolution of City Council that permits such activity is exempt from this section.
- (c) Any person who pleads guilty or nolo contendere or is convicted of violating this section shall be guilty of a class IV civil infraction pursuant to Section 1.12 of this Code of Ordinances.

Section 2: Should any of the clauses, sentences, paragraphs, sections, or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

Section 3: This Ordinance shall become effective immediately upon adoption by City Council.

PASSED ON FIRST READING

June 8, 2023

PASSED ON SECOND AND FINAL READING AND ADOPTED

June 15, 2023

DocuSigned by:

Brian Aungst

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Brian J. Aungst Sr.
Mayor

Approved as to form:

DocuSigned by:

Melissa Isabel

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Melissa Isabel
Senior Assistant City Attorney

Attest:

DocuSigned by:

Rosemarie Call

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Rosemarie Call
City Clerk

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